CORRESPONDENCE.

Judge Harrison in Strother Case.—In view of the fact that there has been some controversy concerning the exact language used by Judge Harrison in his address to the jury just after the rendition of the verdict in the Strother case, the "Law Register," before publishing the language attributed to him in the report of the case, ante, p. 977, submitted a copy thereof to Judge Harrison with the request that he state whether or not it was a correct quotation of the remarks made by him upon that occasion. In reply we are in receipt of the following letter, which we take pleasure in publishing:

Dear Sir:

I think the enclosure contains my exact words.

So much misquotation and misconception of these remarks has been scattered widecast, I hope you will pardon me, if I direct your attention to these facts:

1st. These remarks were made after the trial, when they could by no possibility affect the case.

2d. Beginning with an early ruling in the case and persistingly carried throughout to the final instructions, I held that the so-called unwritten law could receive no judicial recognition. One instruction told the jury that, if the killing was willful, deliberate and premeditated it was murder in the first degree. Another, if it was done in uncontrollable passion on a reasonable provocation, it was manslaughter.

3d. The jury had the right to acquit under insanity plea.

4th. The praise bestowed was upon the conduct of the jury.

5th. I expressed my satisfaction with the verdict because it was in accordance with the dictates of the conscience of high men, and had the verdict been the other way the same remarks would have been equally applicable.

6th. My reference to jury precedents was the statement of an undenied (so far as I have yet seen) and (I believe) undeniable **fact.** It was not the enunciation of a principle of **law,** against the judicial recognition of which the whole conduct of the trial was a protest.

Yours truly,

T. W. HARRISON.

Emotional Insanity.

Editor, Virginia Law Register:

My attention has recently been sharply called to the doctrine of emotional insanity by the Strother trial just ended in Culpeper.

The verdict of the jury in that case was not unexpected by me, as being in accord with most cases of that kind in Virginia. The ruling of Judge Harrison upon the hypothetical question asked by Mr. Moore of the medical expert, and the instruction given by him with

reference to insanity, were, however, a distinct shock to me, as judging from the comments of most of the newspapers, they were to the public at large, and most of the legal profession.

In the address that Judge Harrison made to the jury, after they had brought in their verdict, I find the following sentence: "In regard to the law, that I have given you for your guidance, I have taken the instructions most likely to give rise to debate, word for word, from an instruction, which our highest court sanctioned." He did not say what case he alluded to, but in speaking of the instructions Mr. R. Walton Moore, one of the counsel for the defense, said it was the case of DeJarnette *v.* Commonwealth, found in 75 Va., page 867.

Now I wish to discuss whether the doctrine as laid down by Judge Harrison is the law in Virginia, and if it is not the law, is it right. First is it the law in Virginia. As I said, Mr. Moore said that Judge Harrison had given the same instructions, that had been given in the DeJarnette Case. Let us see.

Instruction No. 19 is as follows: "The term insanity as used in these instructions is that condition of mind, which renders the person irresponsible for crime." No. 21 is as follows: "Antecedent and subsequent conditions of the mind are indicative of the condition of the mind at the time of the act, but they are not conclusive. The subject of inquiry must always be, what was the condition of the mind at the time of the act, which is to be determined from all the facts and circumstances of the case. If at the time of the act a person is insane, as defined in these instructions, he is entitled to be acquitted."

No. 25 is as follows: "If the jury believe from the evidence, that stress or strain upon the mind of the defendant, at the time of the commission of the homicide arising out of the conduct of Bywaters, the deceased, and all the other facts and circumstances in the case, so operated upon the mind of the defendant, as that his reason was dethroned, and his mind so impaired, as that he became temporarily insane, as defined in these instructions, and that he was thereby rendered incapable of governing himself in reference to said Bywaters, the jury should find a verdict of acquittal."

It must be borne in mind, that there was not a word of evidence of any predisposition to insanity, or any claim that the defendants were not perfectly sane, just before the shooting, and also just after, but the claim was that the conduct of Bywaters so infuriated them and wrought them up, that for the moment they became insane.

Now let us examine the DeJarnette Case, and see the circumstances of it, and see what the court said. In the DeJarnette Case, the defendant, who had a predisposition to insanity, found his sister in a brothel in the city of Danville, and killed her, and the defense was that he was insane.

Now first as to the hypothetical questions asked in each case. The one asked by Mr. Moore is too long to be quoted, but in it there is not one word about any disease, or about any predisposition to insanity. In the DeJarnette Case, the hypothetical question is as follows: "Suppose a man had inherited a predisposition to insanity, would great mental anxiety, loss of property, or the honor of one's family, and losses of other kind, be likely to develop the **disease?**"

In the DeJarnette Case, on page 878, the court says as follows: "We think the rule here laid down is in accordance with the best authorities, as well as the dictates of reason and justice. The learned judge tells the jury 'the character of the mental **disease** principally relied on to excuse the prisoner, is that he did the killing under an irresistible impulse, which was the result of a **diseased** mind.' He then proceeds to define an irresistible impulse as a moral or homicidal insanity, consisting of an irresistible inclination to kill or commit some offense—some unseen pressure on the mind, drawing it to consequences which it sees, but can not avoid, and placing it under a coercion which, whilst its results are clearly perceived, it is incapable of resisting. The learned judge then declares it was for the jury to say whether the prisoner was forced to do the killing by such a controlling **disease** against his will, or whether he did it voluntarily with intention to destroy the life of the deceased. Certainly no sound exception can be taken to this definition of homicidal mania, or irresistible impulse, as it is sometimes termed; a **diseased** state of the mind, the tendency of which is to break out in a sudden paroxysm of violence, venting itself in homicide or other dangerous and violent acts upon friend and foe indiscriminately."

This is the sum and the substance of the DeJarnette Case that Mr. R. Walton Moore said Judge Harrison was following.

It does not take a lawyer to see the wide difference between this case and the Strother Case. The Strothers did what they said they started out to do long before there was any killing; that is, kill Bywaters, if he did not live with their sister after he married her. There was not the slightest evidence of any other act indicating insanity except the killing of Bywaters. They were, according to their own evidence and the evidence of the expert, sane the minute before they did it, insane only when they were doing it, and then sane the next moment. That is what Judge Harrison says is an irresistible impulse. The Court of Appeals in the DeJarnette Case, says an irresistible impulse is such a **diseased** condition of the brain, that makes a man liable to slay friend or foe alike. There is no doubt that the Court of Appeals of Virginia, so far has never sanctioned the doctrine of emotional insanity. This being so, is there any good reason why it should become the law of Virginia? It certainly is not the law in most of the states. I hear, although I have not the reports, that it has been adopted by the courts of the District of Columbia. But is there any good reason, why our courts should

adopt the law of the District of Columbia, and make that the law in Virginia which was not law before.

The common sense view of insanity, is that of a diseased brain, in consequence of which a man's reason is dethroned. Whether it can be seen by a microscope or not, there must be some change in the substance of the brain. And this being so, the law says he is not responsible for his acts. But to say, that because, a man with a high temper gets ungovernably mad, he can kill and slay with impunity, and then come and say he could not control himself, and thus be excused from punishment, is with all respect to courts or judges, or anybody else, that holds it, arrant nonsense. The effect of it would be, that if a man became not very mad, and killed some one, he would either be hung or sent to the penitentiary, but if he became really mad, he would be acquitted. If that were so, it might be well to have an uncontrollable temper.

I believe our Court of Appeals has got too much sound common sense to ever take any such position, and that if it did, it would not be long, before the people of Virginia, would send a legislature to Richmond, who would make short work of any such doctrine. The truth of it is, that any such doctrine is but the result of hired expert evidence, that can always be gotten to prove that any one is crazy, if enough money is paid for it. Or it is the wild thought of doctors around lunatic asylums, who deal with crazy people so much, that they come to think that all people are insane except themselves.

S. B. WHITEHEAD.

Lovingston, Va.

IN VACATION.

Act of God.—J. F. Williams, a well-known citizen of Gastonia, had his leg broken while being baptized. He may sue the officiating minister.

The Oldest Lawsuit.—The oldest lawsuit in the world is one in Spain, which has been in the courts 389 years, having been begun in 1517. It concerns a pension, and has given fees to generations of lawyers.—American Lawyer.

He Got the Girl.—Senator Beveridge was condemning a notoriously corrupt and notoriously plausible capitalist.

"The man speaks well," said Senator Beveridge. "He promises much. If he acted as he talked he would be famous for his goodness. But, alas! he is like the German who nearly lost his daughter.

"This German, with his daughter, was walking beside a deep stream on a summer afternoon when the young girl, slipping on a stone,